

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-03**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Taxability of mobile disc jockey services.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is in the business of providing mobile disc jockey services. This entails his contracting with an individual or organization to provide his or another person's services as a disc jockey. He provides all equipment necessary for this activity. He charges a flat fee for his services which is negotiated for each engagement. The activities at which he provides services include parties in personal residences, wedding and other receptions, and parties sponsored by businesses or community organizations for their employees or members. These are not activities at which admission is charged. The compensation [THE TAXPAYER] receives is not from gross receipts or gross proceeds from the sale at retail of any dues or fees, ticket sales, admission charges, or any charge for the privilege of using tangible personal property in a recreational activity.

[THE TAXPAYER]'s other business involves providing music at a singles dance club at a fixed and permanent location for which admission is charged. As his compensation for these services, [THE TAXPAYER] receives a percentage of the gate collections. In this business, [THE TAXPAYER] provides a service which is subject to the amusement tax and for which he collects and remits the tax.

ISSUES

Whether the services provided by [THE TAXPAYER] as a mobile disc jockey for private parties in personal residences, weddings, and other receptions are subject to sales and use tax.

RULINGS

[THE TAXPAYER]'s services as a mobile disc jockey for private parties in personal residences, weddings, and other receptions as described are not subject to sales tax.

ANALYSIS

Tenn. Code Ann. § 67-6-201 declares the business of selling tangible personal property at retail to be a taxable privilege. A "sale at retail" is defined by Tenn. Code Ann. § 67-6-102(23)(F)¹ to include certain services. The services provided by [THE TAXPAYER] as

¹ (F) "Retail sale," "sale at retail," and "retail sales price" include the following services:
 (i) The sale, rental, or charges for any rooms lodgings or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp
 (ii) Charges for services rendered by persons operating or conducting a garage, parking lot, or other place of business for the purpose of parking or storing motor vehicles . . .
 (iii) The furnishing, for a consideration, of either intrastate or interstate telecommunication services . . .
 (iv) The performing for a consideration of any repair services . . .
 (v) The laundering or dry cleaning of any kind of tangible personal property . . .

a mobile disc jockey are not of the type enumerated in Tenn. Code Ann. § 67-6-102(23)(F). Accordingly, his services are not taxable under this section.

Tenn. Code Ann. § 67-6-212 imposes an amusement tax on the gross proceeds of the sale at retail of other services:

- (1) Dues or fees to membership sports and recreation clubs . . .
- (2) Sales of tickets, fees, or other charges made for admission to or voluntary contributions made to places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities . . .
- (3) Charges made for the privilege of entering or engaging in any kind of recreational activity, when no admission is charged spectators, such as tennis, racquetball, or handball courts;
- (4) Charges made for the privilege of using tangible personal property for amusement, sports, entertainment or recreational activities such as . . . sports and athletic equipment; and
- (5) Fees for subscription to . . . cable television services in excess of those charges made for the basic rate . . .

[THE TAXPAYER] does not engage in any of the activities listed in the statute. The compensation he receives for his services is not from gross receipts or gross proceeds from the sale at retail of any dues or fees, ticket sales, admission charges, or any charge for the privilege of using tangible personal property in a recreational activity. Therefore, there are no taxable services being rendered and the tax on amusements is not applicable.

Caroline R. Krivacka
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: 2/3/97

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- (vi) The installing of tangible personal property which remains tangible personal property after installation . . .
 - (vii) The enriching of uranium materials . . .
 - (viii) The renting or providing of space to a dealer or vendor without a permanent location in this state . . .
 - (ix) Charges for warranty or service contracts . . .